Supreme Court, U.S.
FILED
AUG 8 2000
CLERK

No. 99-1132

IN THE

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

CHARLES McARTHUR,

Respondent.

ON WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS* 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. THE IMPOUNDMENT ALTERNATIVE CANNOT BE WITHOUT LIMITS 5

II. THE POLICE CONDUCT IN THIS CASE REPRESENTED AN INTRUSION INTO MR. MCARTHUR'S PRIVACY INTERESTS 7

III. THIS INTRUSION WAS NOT JUSTIFIED BY ANY EXIGENT CIRCUMSTANCES 10

IV. PERMITTING THE POLICE CONDUCT IN THIS CASE WOULD BE CONTRARY TO PUBLIC POLICY, AS IT WOULD CONDONE SERIOUS INVASIONS OF PRIVACY AT MINIMAL BENEFIT TO LAW ENFORCEMENT 14

CONCLUSION 18

TABLE OF AUTHORITIES

CASES PAGE(S)

Arkansas v. Sanders, 442 U.S. 753 (1979) 12

Chambers v. Maroney, 399 U.S. 42 (1970) 9, 10

Chimel v. California, 395 U.S. 752 (1969) 7, 8, 9

Gouled v. United States, 255 U.S. 298 (1921) 6

Maryland v. Wilson, 519 U.S. 385 (1978) 7

Mincey v. Arizona, 437 U.S. 385 (1978) 10, 11, 12

Payton v. New York, 445 U.S. 573 (1980) 15

People v. Clements, 339 N.E.2d 170 (N.Y. 1975) 17

People v. McArthur, 713 N.E.2d 93 (Ill.App.Ct.) *appeal denied*, 720 N.E.2d 1101 (Ill. 1999), *cert. granted*, 20 S. Ct. 1830 (2000) 2, 3, 6

People v. Smith, 496 P.2d 1261 (Cal. 1972) 13

Segura v. United States, 468 U.S. 796 (1984) .. 4, 5, 6, 8, 9, 10, 11, 12, 13

Sheik-Abdi v. McClellan, 37 F.3d 1240 (7th Cir. 1994) 15

Terry v. Ohio, 392 U.S. 1 (1968) 10

United States v. Brignoni-Ponce, 422 U.S. 873 (1975) ... 17

United States v. Jeffers, 342 U.S. 48 (1951) 12

United States v. Karo, 468 U.S. 705 (1984) 8, 12

United States v. Place, 462 U.S. 696 (1983) 10, 11

United States v. Thompson, 700 F.2d 944 (5th Cir. 1983) 13

Vale v. Louisiana, 399 U.S. 30 (1970) 7, 8, 9, 13

Welsh v. Wisconsin, 466 U.S. 740 (1984) 14

Wong Sun v. United States, 371 U.S. 471 (1963) 6

STATUTES PAGE(S)

720 Ill. Comp. Stat. Ann. 600/3.5(a), 550/4(a) (West 1993 & Supp. 2000) 2

OTHER AUTHORITIES PAGE(S)

3 Wayne R. LaFave, *Search and Seizure*, §6.5(c) (3d ed. 1996) 8, 11, 15, 17

INTEREST OF THE *AMICUS*[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit corporation with more than 10,000 members nationwide and 28,000 affiliate members in 50 states, including private criminal defense lawyers, public defenders and law professors. The American Bar Association recognizes NACDL as an affiliate organization and awards it full representation in its House of Delegates. NACDL was founded in 1958 to promote study and research in the field of criminal law, to disseminate and advance knowledge of the law in the area of criminal practice, and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. NACDL seeks to defend individual liberties guaranteed by the Bill of Rights and has a keen interest in ensuring that legal proceedings are handled in a proper and fair manner. Among NACDL's objectives is the promotion of the proper administration of justice.

STATEMENT OF THE CASE

On April 2, 1997, two Sullivan, Illinois police officers accompanied Tera McArthur to retrieve belongings from the trailer she shared with her estranged husband, Respondent Charles McArthur. Pet. App. 2. Officers Love and Skidis waited on the porch while Mrs. McArthur removed her property. Pet. App. 2. When Mrs. McArthur emerged from the trailer, she informed Officer Love that the Respondent had "pot" in the trailer under the couch. Officer Love knocked on the door and, when Mr.

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1 The parties have consented to the filing of this brief. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

McArthur answered, Officer Love told the Respondent that his wife had alleged the presence of drugs in the trailer. The defendant denied the allegation and also denied the officer's request to search the residence without a warrant. By the end of this exchange, Mr. McArthur was standing on the porch. However, Officer Love cannot recall whether Mr. McArthur emerged voluntarily or whether Officer Love ordered Mr. McArthur out of his home. *See People v. McArthur*, 713 N.E.2d 93, 94 (Ill. App. Ct.) *appeal denied*, 720 N.E.2d 1101 (Ill. 1999), *cert. granted*, 20 S. Ct. 1830 (2000).

Mr. McArthur has testified that he overheard Officer Love and Mrs. McArthur talking about getting a search warrant and about Mrs. McArthur testifying. Eventually, Officer Skidis accompanied Mrs. McArthur to testify before a magistrate, and Officer Love approached Mr. McArthur to tell him "what was happening." *See id.* at 94. From that point on, Officer Love did not allow Mr. McArthur into his home except to retrieve cigarettes and make telephone calls. When Mr. McArthur did enter his home, Officer Love accompanied him and observed him at all times. This observation lasted between one and two hours. At no time was Mr. McArthur informed whether or not he was in custody. *See id.* at 94-95.

When the police returned with a warrant, they entered the trailer and Mr. McArthur voluntarily showed the officers the location of the drugs. Mr. McArthur was arrested and charged with two counts of unlawful possession of drug paraphernalia and one count of unlawful possession of a substance containing less than 2.5 grams of cannabis. *See* 720 Ill. Comp. Stat. Ann. 600/3.5(a), 550/4 (a) (West 1993 & Supp. 2000). Mr. McArthur has testified that he would have destroyed the marijuana that was in his home had he ever been allowed to reenter his residence alone. *See McArthur*, 713 N.E.2d at 94.

At trial, Mr. McArthur moved to suppress the evidence found in his residence pursuant to the warranted search, arguing that his Fourth Amendment rights were violated because of the police seizure and search of his residence during the two hours it took to secure the search warrant. The trial court granted the motion to suppress. *See id.* Petitioners appealed and the Fourth District appellate court affirmed. *See id.* The Fourth District appellate court held that police execute an unreasonable search and seizure when they limit "'the freedom of movement of persons within, into or out of'" secured premises, unless those persons are already in custody, are subject to arrest when they appear, or have consented to remain outside. *Id.* at 96 (citation omitted).

SUMMARY OF ARGUMENT

When police have probable cause to believe a dwelling contains incriminating evidence, they face the possibility that such evidence will be destroyed in the time it takes to obtain a search warrant. Recently, however, impoundment of a defendant's premises has emerged as a potentially less intrusive method of preserving evidence than an immediate and warrantless search. While this Court has approved certain types of impoundment, it has not yet authorized police to impound private dwellings that remain *occupied*, and to control the occupants' movement into and out of their dwelling.

The Fourth Amendment demands that this Court exercise extra caution in delineating the parameters of this "impoundment alternative." This requires an examination of whether impoundment intrudes upon the privacy interests of the defendant, and if so, whether the impoundment was conducted under exigent circumstances. The NACDL submits that impoundment of occupied private premises constitutes an invasion of privacy and, as such, *is only constitutionally reasonable when circumstances are*

exigent, and where the alternative methods of preventing the destruction of evidence are more intrusive than impoundment itself.

In this case, the conduct of the police represented a substantial intrusion into Mr. McArthur's privacy interests. Unlike *Segura v. United States*, 468 U.S. 796 (1984) in which this Court approved a warrantless internal securing of an unoccupied premises while the residents were in custody, the hallmark of this case is that Mr. McArthur was at home while the alleged search and seizure took place. And yet, at the heart of the Fourth Amendment is the belief that privacy interests, especially when the defendant is at home, deserve the strongest protection from state intrusion. Whether the impoundment in this case is deemed a "search" or a "seizure," it deserves such protection.

Under the Fourth Amendment, impoundment that interferes with a defendant's privacy interests has rarely been permitted absent exigent circumstances. In this case, no greater than a theoretical risk of evidence destruction existed until the police unnecessarily asked the defendant if they could search his trailer. Moreover, appellate courts have held that police cannot, through their own conduct, create exigent circumstances justifying a warrantless entry where none otherwise existed.

Permitting the police conduct in this case would condone substantial invasions of privacy at minimal benefit to law enforcement. In this case, Officers Love and Skidis had at least three alternatives to impounding Mr. McArthur's premises and possibly seizing his person. Before the police created the exigent circumstances that supposedly necessitated their impoundment of Mr. McArthur's premises, they could easily have obtained a search warrant on the strength of Mrs. McArthur's testimony before a magistrate. Alternatively, the police could have arrested Mr. McArthur and apprised him of his Miranda rights either before or after they created exigent circumstances. After the police created

the exigent circumstances justifying impoundment, they might have performed an immediate but warrantless search of Mr. McArthur's trailer.

Investigative procedures employed by the police should be the least intrusive means reasonably available to verify or dispel the officer's suspicion. By choosing impoundment in the face of less intrusive alternatives, the police demonstrated their indifference to Mr. McArthur's privacy interests and thereby struck an unreasonable balance between the interests of law enforcement and the constitutional rights of an alleged criminal.

ARGUMENT

I. THE IMPOUNDMENT ALTERNATIVE CANNOT BE WITHOUT LIMITS

When police have probable cause to believe a dwelling contains incriminating evidence, they face the possibility that such evidence will be destroyed in the time it takes to obtain a search warrant. Courts have approved several methods of circumventing this problem, such as arresting the occupants of the residence and searching incident to arrest, obtaining the occupants' consent to search, and in some cases conducting a search without a warrant. Most recently, impoundment of a defendant's premises has emerged as a potentially less intrusive alternative to warrantless search and arrest.

In defining the contours of the "impoundment alternative," this Court has held that police may impound a residence from the outside even absent exigent circumstances, and may secure a residence from the inside when the person otherwise claiming a privacy interest is in custody. *See Segura*, 468 U.S. 796 (1984). However, this Court has not yet authorized police to impound residences that remain occupied, and to control the occupants'

movement into and out of the residence. Such conduct was not addressed in *Segura*, and was deemed constitutionally unreasonable by the Illinois Appellate Court in this case. *See McArthur*, 713 N.E.2d at 98.

The impoundment of occupied premises does not fit neatly into the traditional categories of Fourth Amendment case law. However, its use does not dictate a diminution in the deference to privacy and possessory interests that the Fourth Amendment protects. Rather, this Court should exercise extra caution in delineating the parameters of permissible police conduct in cases of impoundment. The Fourth Amendment demands that the right to privacy be guarded with the greatest caution "so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned, but mistakenly overzealous, executive officers." *Gouled v. United States*, 255 U.S. 298, 304 (1921).

Warrantless impoundment of occupied premises represents a real invasion into the privacy interests of the occupants, often at minimal benefit to law enforcement. Whether deemed a "search" or a "seizure," such conduct *is only constitutionally reasonable when circumstances are exigent, and where the alternative methods of preventing the destruction of evidence are more intrusive than impoundment itself.* The NACDL believes that the police conduct in this case struck the wrong balance between the privacy of the defendant and the interest of law enforcement.[2]

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[2] The link between the unreasonable police action and the discovery of the evidence is clear in this case. Mr. McArthur has testified that were it not for the police's constant surveillance, he would have destroyed the evidence in his trailer. Clearly, this qualifies the evidence as "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

II. THE POLICE CONDUCT IN THIS CASE REPRESENTED AN INTRUSION INTO MR. MCARTHUR'S PRIVACY INTERESTS

1. Privacy interests, especially when the defendant is at home, deserve the strongest protection of the Fourth Amendment.

The reasonableness of a search or seizure is determined by balancing the government's law enforcement interests against any intrusion on the defendant's Fourth Amendment rights. *Maryland v. Wilson*, 519 U.S. 408, 411 (1997). Thus, while this Court has recognized a strong law enforcement interest in protecting incriminating evidence from destruction, this interest has been balanced against the possessory and privacy interests of individual defendants. The police conduct in this case implicated Mr. McArthur's privacy interests, which deserve the strongest protection of the Fourth Amendment.

Cases decided by this Court have confirmed the necessity of protecting privacy interests in the context of drug investigations – particularly when a private dwelling is involved. In *Chimel v. California*, 395 U.S. 752, 763 (1969), this Court limited the area that police may search incident to a lawful arrest to "the area from within which he might gain possession of a weapon or destructible evidence." The next term, in *Vale v. Louisiana*, 399 U.S. 30, 33-34 (1970) this Court held that a lawful arrest on the street outside a defendant's dwelling does not justify the warrantless search of the defendant's dwelling as incident to lawful arrest or under exigent circumstances.

At the heart of *Chimel* and *Vale* is the belief that privacy interests, especially when the defendant is at home, deserve the strongest protection of the Fourth Amendment. Though the home has long been recognized as the most impenetrable bastion of

privacy, where "the individual normally expects privacy free of governmental intrusion." *United States v. Karo*, 468 U.S. 705, 714 (1984), *Chimel* and *Vale* make it even more clear that, even in cases where there is a substantial state interest in procuring evidence, the home must remain free from unreasonable intrusion.

2. By keeping Mr. McArthur under watch in his home while obtaining a search warrant, the police intruded upon his privacy interests.

In *Segura*, 468 U.S. at 813, this Court took note of the difference in conduct leading to invasions of privacy, as opposed to possessory, interests. Although *Segura* also dealt with a case of impoundment, the critical difference between *Segura* and the case at hand is the presence of the defendant in the home while the impoundment took place. For this Court, in *Segura*, the defendants' absence during an internal impoundment of their residence vitiated any intrusion into their privacy interests. In this case, however, Mr. McArthur's private actions in his home were observed, and his personal belongings viewed without permission, for extended periods of time. It is intuitive that such intrusive police presence constitutes a gross invasion of Mr. McArthur's privacy interests.

Indeed, Professor LaFave has stated that the practice of keeping a defendant under watch while police obtain a warrant is even "more intrusive" than mere impoundment of a defendant's premises. 3 Wayne R. LaFave, *Search and Seizure*, §6.5(c), at 367 (3d ed. 1996). Though petitioners argue that the police action in this case constituted only an infringement of possessory interests, there was in fact a palpable violation of Mr. McArthur's privacy. The nature of this violation is captured by the dissenters in *Segura*, who observed that

> [e]ven assuming the most innocent of motives, the agents' occupation of petitioners' living quarters inevitably involved scrutiny of a variety of personal effects throughout the apartment. Petitioners' privacy interests were unreasonably infringed . . . .

468 U.S. at 821 (Stevens, J., dissenting) (footnote omitted). In this case, Mr. McArthur's home was under internal observation on repeated occasions over a two hour period. His personal effects were open to scrutiny, and his behavior in his own home was open to unrestricted viewing by Officer Love, despite the fact that Mr. McArthur had not been informed that he was under arrest, and had already stated that Officer Love did not have permission to enter his home.

3. The police conduct in this case is thus unreasonable whether it is analyzed as a search or as a seizure.

Because *Chimel* and *Vale* reemphasize the status of the home as a place of special deference to privacy interests, subsequent cases have sought to draw a distinction between the significance of privacy versus possessory interests. As cases like *Segura* have shown, there is indeed a difference in the nature of the conduct giving rise to possessory and privacy violations. However, the Court's decision in *Chambers v. Maroney*, 399 U.S. 42, 51 (1970) suggests that there is no difference between the severity of an unreasonable "seizure" and an unreasonable "search."

In *Chambers*, this Court held that, given probable cause, there was no constitutional difference between seizing a car and waiting on a warrant and doing an immediate warrantless search of the car. The court reasoned that since there was a right to search the car on the highway, moving it to headquarters would have made

little practical difference. In this way, the *Chambers* Court envisioned no difference in the Fourth Amendment implications of a search and those of a seizure. If a seizure had been less volatile than a search, the *Chambers* Court would have required that the police seize the car and wait for a warrant rather than doing a warrantless search. By analogy, the constitutional analysis in the instant case hinges on the fact that Mr. McArthur's *privacy* interests were abridged by an enforced dispossession of his home, regardless of whether this dispossession is analyzed as a search or as a seizure.

III. THIS INTRUSION WAS NOT JUSTIFIED BY ANY EXIGENT CIRCUMSTANCES

1. Under the Fourth Amendment, impoundment that interferes with a defendant's privacy interests has rarely been permitted absent exigent circumstances.

In *Terry v. Ohio*, 392 U.S. 1, 26 (1968), this Court required that warrantless police action be "strictly circumscribed by the exigencies which justify its initiation." While it is true that this Court has occasionally approved of temporary seizures based on probable cause alone, these cases have involved actions that did not implicate privacy interests. For example, the case of *United States v. Place,* 462 U.S. 696 (1983) permitted a warrantless seizure based on probable cause where there was no invasion of privacy. Similarly, cases like *Segura* and *Mincey v. Arizona*, 437 U.S. 385 (1978) have permitted

warrantless seizure of property based on probable cause *only* where the occupants were not at home.[3]

Indeed, temporary seizure of property is permissible absent exigent circumstances (as per *Mincey* and *Place*) where the owner's *use* of the property is frustrated. However, as this Court noted in *Segura*, there is a substantive difference between interference with privacy and with possessory interests. In that case, this Court suggested that *in the event of an invasion of privacy interests, warrantless police action based solely on probable cause cannot be justified absent exigent circumstances*. *Segura,* 468 U.S. at 811-12. This dictum led to the conclusion that "absent exigent circumstances," the police's initial entry into the defendants' premises "may have constituted an illegal search, or interference with petitioners' privacy interests." *Id.* As discussed above, the police action in this case was a clear violation of Mr. McArthur's privacy interests, since his person and his effects were open to view by Officer Love throughout the duration of the impoundment.

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3 Moreover, in *Segura v. United States*, 468 U.S. 796, 811 (1984), the Court did not address, much less authorize, an invasion of privacy interests. The Court was focused on the seizure aspect of the police conduct, acknowledging that "absent exigent circumstances," any *entry* into the premises "may have constituted an illegal search." *See* 3 Wayne R. LaFave, *Search and Seizure* §6.5(c), at 366 (3d ed. 1996).

2. Exigent circumstances did not exist in this case

The invasion of privacy in this case cannot be justified by any genuinely exigent circumstances. First, the *theoretical* risk that evidence will be destroyed is not enough to support warrantless impoundment of a residence where the occupant is at home – much less warrantless entry of the residence without informed consent. In opposition to this view, petitioners' supporter cites numerous cases for the proposition that warrantless seizure based solely on probable cause is permissible under the Fourth Amendment. None of these cases, however, involves a situation in which the owner or occupant of the dwelling was at home and under observation. *See, e.g., Mincey*, 437 U.S. 385.

Furthermore, cases such as *United States v. Jeffers*, 342 U.S. 48 (1951), *Arkansas v. Sanders*, 442 U.S. 753 (1979) and *Chambers* do not involve private residences, where the expectation of privacy is at its highest. In this case, by contrast, Mr. McArthur was in his home and had every expectation of privacy. *See Karo*, 468 U.S. at 714 (holding that "private residences are places in which the individual normally expects privacy free of governmental intrusion"). As discussed above, this Court has not articulated an instance in which the *privacy* interests of a defendant may be violated based solely on probable cause and absent exigent circumstances.

With respect to the existence of exigent circumstances in this case, no greater than a theoretical risk of evidence destruction existed until the police unnecessarily asked Mr. McArthur if they could search his trailer.[4] Before this request, the only way Mr.

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[4] It is worth noting that the *Segura* court acknowledged that the theoretical risk of evidence destruction was not enough to create

(continued...)

McArthur would have thought to destroy the evidence would be if he had suspected his wife might tell the officers about the drugs under his couch. This is a strained theory, one that does more to justify the officers' conduct after the fact than to illustrate any reasonable suspicion they might have had at the time. Crucially, it fails to explain why Mr. McArthur made no attempt, before the police asked to search his trailer, to destroy the 2.3 grams of marijuana or the drug paraphernalia – despite the fact that he was aware of a police presence for quite some time.

Second, police cannot, through their own conduct, create exigent circumstances justifying a warrantless entry where none otherwise existed. *See United States v. Thompson*, 700 F.2d 944 (5th Cir. 1983). In this case, the police testified that they had probable cause to arrest Mr. McArthur and/or obtain a search warrant as soon as Mrs. McArthur advised them that her husband had marijuana inside his trailer. Jt. App. 24. Instead of arresting Mr. McArthur or obtaining a warrant immediately, the police chose to knock on Mr. McArthur's door, tell him his wife had seen

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[4] (...continued)
a causal link between police misconduct and preservation of evidence. Here, had the police not prompted the destruction of the evidence through their communications with Mr. McArthur, the possibility of the destruction of the marijuana would have been speculative at best. If the "speculative" possibility of destruction of evidence was not enough to taint the evidence in *Segura*, it is difficult to see how the "speculative" possibility of destruction of evidence in this case could possibly give rise to the even higher standard needed for exigent circumstances. *Segura*, 468 U.S. at 815-16. *See also Vale v. Louisiana*, 399 U.S. 30, 35 (1970) (holding that evidence must be "in the process of destruction" in order to justify warrantless entry and search of a dwelling); *People v. Smith*, 496 P.2d 1261, 1263 (Cal. 1972) (holding that "in the absence of a showing of true necessity–that is, an imminent and substantial threat to life, health, or property–the constitutionally guaranteed right to privacy must prevail").

marijuana in his trailer, and ask if they could search the premises.[5] Jt. App. 16. When he refused the request to search, the police asked Mrs. McArthur, within earshot of Mr. McArthur, whether she would accompany one of the officers to a magistrate to obtain a search warrant. Jt. App. 16-17, 26. Had the police not taken this course of action, the risk of evidence destruction would have remained theoretical.

IV. PERMITTING THE POLICE CONDUCT IN THIS CASE WOULD BE CONTRARY TO PUBLIC POLICY, AS IT WOULD CONDONE SERIOUS INVASIONS OF PRIVACY AT MINIMAL BENEFIT TO LAW ENFORCEMENT

1. The police had at least three alternatives to impoundment

What is especially troubling about the police's course of action in this case is how easily it could have been avoided. Before the police created the exigent circumstances that supposedly necessitated their impoundment of Mr. McArthur's premises, they could easily have obtained a search warrant on the strength of Mrs. McArthur's testimony before a magistrate. To the extent that the purpose of the warrant requirement is to prevent "unnecessary intrusions into private dwellings... [by] agents of the government who seek to enter the home for the purposes of search or arrest," this would have been a much more reasonable course of action. *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984). It is ironic that the unhurried process of obtaining a search warrant functioned to

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5 The point of this argument is not to discourage consent searches *per se*, but merely to illustrate the lack of exigent circumstances in this case.

compromise Mr. McArthur's privacy interests rather than to protect them.

As an alternative to obtaining a warrant without impounding the premises, the police could have arrested Mr. McArthur and apprised him of his Miranda rights.[6] When asked at trial why he did not arrest Mr. McArthur, Officer Love admitted he had probable cause to arrest but gave the following response:

> Because, at that point, sir, I, through my training, we had probable cause, I felt, due to Mrs. McArthur's statement, that I felt it was best to wait until we got the search warrant to find the evidence.

Jt. App. 24. Even when counsel repeated the question, Officer Love replied:

> Again, my training and experience, I felt that if we could get the search warrant that it would be proper to wait until we found it.

Jt. App. 24. These evasive replies suggest that the course of action taken by Officers Love and Skidis lacked a reasonable justification. Rather than arrest Mr. McArthur on probable cause, the officers

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6 The fact that the police did not have an arrest warrant does not refute this point. First, this requirement only applies to *entry* of private premises for the purpose of making an arrest, which may not have been necessary in this case given that Mr. McArthur exited his trailer after the police arrived. *See Payton v. New York*, 445 U.S. 573, (1980). *See also Sheik-Abdi v. McClellan*, 37 F.3d 1240 (7th Cir. 1994). Second, an exception to the arrest warrant requirement is triggered where the police have another lawful basis to obtain entry onto the premises, such as, in this case, to keep the peace while Mrs. McArthur collected her belongings. *See* LaFave, *supra*, §6.1(c).

chose to knock on Mr. McArthur's door, tell him his wife had seen marijuana in his trailer, and request a search so that they could have the luxury of solving their case before effecting an arrest.[7] Jt. App. 16. No doubt anticipating that this request would be denied, thus leading to the apparent need for impoundment of the premises, Officers Love and Skidis acted recklessly with respect to their constitutional duty to respect Mr. McArthur's privacy.

Even after the police created the exigent circumstances supposedly necessitating impoundment, they still had an opportunity to arrest Mr. McArthur instead of impounding his premises. Again, however, the officers chose to defer arrest so that they could solve their case. While one officer barred Mr. McArthur from entering his home unaccompanied and kept him under watch for over an hour, the other officer went to a magistrate to obtain a search warrant. Jt. App. 17-18. This invasion of Mr. MacArthur's privacy – done ultimately to confirm the existence of criminal activity which the police already had probable cause to suspect – showed an unnecessary disregard for Mr. McArthur's Fourth Amendment rights. By placing their investigative whims above Mr. McArthur's privacy interests, the police behaved in a constitutionally unreasonable manner.

Even were arrest not feasible – suppose, for example, the only occupant of the trailer at the time was a third party such as Mr. McArthur's mother – the police might have considered an immediate but warrantless search of Mr. McArthur's trailer as an alternative to impoundment. At least one court has rejected impoundment in favor of a warrantless search, where the former "would have

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7 Again, the point of this argument is not to discourage consent searches *per se*. Rather, it is to illustrate that any exigent circumstances in this case were of the police's own making, and that the police had several alternatives to creating the exigent circumstances that ultimately necessitated impoundment.

entailed a much greater intrusion in both space and time" than the latter. *People v. Clements*, 339 N.E.2d 170, 173 (N.Y. 1975). In this case, as in *Clements*, the seizure of evidence did not require a lot of time and was focused on a "predetermined target." The fact that the police immediately resorted to impoundment only illustrates further their indifference toward Mr. McArthur's privacy. As Professor LaFave writes, "[w]here ... only a very limited search in a specific location is needed, it may well be that a warrantless search of that place is so clearly a lesser intrusion that it may be undertaken in lieu of impoundment of the premises until a warrant can be obtained." LaFave, *supra*, §6.5(c), at 373.

2. Permitting the most intrusive alternative would be contrary to public policy

Investigative procedures employed by the police should be the least intrusive means reasonably available to verify or dispel the officer's suspicion. *See United States v. Brignoni-Ponce*, 422 U.S. 873 (1975). In this case, Officers Love and Skidis had at least three alternatives to impounding Mr. McArthur's premises and seizing his person: (1) obtaining a search warrant before, and instead of, creating any exigent circumstances; (2) arresting Mr. McArthur and apprising him of his Miranda rights; and (3) conducting an immediate and warrantless search of the premises. All three of these alternatives would have prevented the destruction of incriminating evidence, which is an ongoing and legitimate concern of law enforcement officials.

More to the point, these three alternatives would have spared Mr. McArthur the inconvenience and humiliation of being kept under watch while the police made their case against him. The police demonstrated their indifference to these interests by choosing impoundment in the face of less intrusive alternatives. Given the relatively minor nature of the offenses involved, this choice struck an

unreasonable balance between the interests of law enforcement and the constitutional rights of Mr. McArthur.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully urges the court to uphold the judgment of the Appellate Court of Illinois.

Respectfully submitted,

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